

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DR. MAX ARNETT,

Plaintiff,

v.

OHIO NATIONAL LIFE ASSURANCE  
CORPORATION,

Defendant.

Case No. C05-5639 FDB

ORDER COMPELLING DISCOVERY  
AND AWARDING TERMS

This matter comes before the Court on Defendant's Motion to Compel Discovery. After reviewing all materials submitted by the parties and relied upon for authority, the Court is fully informed and hereby grants the motion to compel discovery and award terms.

**INTRODUCTION AND BACKGROUND**

This suit for insurance benefits and violation of Washington's Consumer Protection Act, RCW 19.96.020, was filed by Plaintiff on July 20, 2006 in Pierce County Superior Court. The Defendant removed the action to this Court on the basis of diversity. Trial is set for February 12, 2007. Discovery cutoff was October 16, 2006.

This is the second occasion on which this Court has concerned itself with pretrial discovery in

1 this matter. On October 23, 2006, this Court entered an Order Excluding Plaintiff's Proposed  
2 Experts due to a complete failure to comply with Fed. R. Civ. P. 26(a)(2). In passing on that motion  
3 the Court noted that this present motion to compel written discovery was pending before the Court.  
4 The Court admonished the parties to promptly complete discovery and cautioned that severe  
5 sanctions, including terms and the possibility of dismissal, would be imposed when addressing this  
6 motion. Plaintiff has ignored this Courts' admonishment. Not only has Plaintiff failed to provide the  
7 requested discovery, proper responses to interrogatories and requests for production, Plaintiff has  
8 not filed a response to the motion.

### 9 **DUTY TO COMPLY WITH DISCOVERY REQUEST**

10 Ohio National request an order compelling Plaintiff to provide complete responses to  
11 Interrogatory Nos. 2-6 and Requests for Production Nos. 1-6. Plaintiff has not responded to the  
12 motion. Under Local Rule 7 his failure to respond may be deemed as an admission that the motion  
13 has merit. As Defendant's statement of facts are not contested the Court adopts the facts as set forth  
14 in Defendant's motion.

15 Where the response to discovery is unsatisfactory, the party seeking discovery may file a  
16 motion to compel discovery, including a copy of the discovery propounded and the response thereto.  
17 Fed. R. Civ. P. 37. An "evasive or incomplete disclosure, answer, or response is to be treated as a  
18 failure to disclose, answer, or respond." Fed. R. Civ. P. 37(a)(3). It is well established that a failure  
19 to object to discovery requests within the time required constitutes a waiver of any objection.  
20 Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473 (9<sup>th</sup> Cir. 1992).

21 The Court finds it appropriate and necessary to compel discovery.

### 22 **SANCTIONS**

23 Rule 37(c) states: (1) A party that without substantial justification fails to disclose  
24 information required by Rule 26(a) or 26(e)(1), or to amend a prior response to discovery as  
25 required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a

1 trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in  
2 lieu of this sanction, the court, on motion and after affording a opportunity to be heard, may impose  
3 other appropriate sanctions. In addition to requiring payment of reasonable expenses, including  
4 attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under  
5 Rule 37(b)(2)(A), (B), and (c) and may include informing the jury of the failure to make the  
6 disclosure.

7 In order to avoid sanctions, Plaintiff has the burden of establishing that he had a “substantial  
8 justification” for failure to respond and that any late disclosure is “harmless.” Yeti by Molly, Ltd. v.  
9 Deckers Outdoor Corp., 259 F.3d 1101, 1107 (9<sup>th</sup> Cir. 2001). As previously noted, Plaintiff has  
10 made no response. The Court finds that a sanction in the amount of a reasonable attorney’s fee  
11 incurred by Defendant in bringing this discovery motion is appropriate. The Court finds that  
12 \$1,400.00 is a reasonable compensation for the fees incurred by Defendant in having to bring this  
13 action.

### 14 15 CONCLUSION

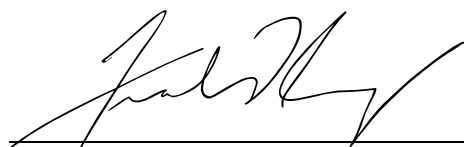
16 The Court having reviewed the pleadings, or lack thereof, and the remaining record, and for  
17 the reasons set forth above,

#### 18 19 IT IS HEREBY ORDERED:

- 20 (1) Defendant’s Motion to Compel Discovery [Dkt. #24] is **GRANTED**,  
21 (2) No later than November 16, 2006, Plaintiff must provide full and complete answers  
22 to Interrogatories Nos. 2-6 and all documents responsive to Requests for Production  
23 Nos. 1-6.  
24 (3) No later than November 16, 2006, Plaintiff must pay to Defendant \$1,400.00, as  
25 terms for having filed this motion to compel.

1 (4) Failure to comply with this Order will result in immediate dismissal of this action, with  
2 prejudice.  
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6 DATED this 6<sup>th</sup> day of November, 2006.  
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9 FRANKLIN D. BURGESS  
10 UNITED STATES DISTRICT JUDGE  
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